

WORK SESSION
City of Hampton Wetlands Board
Lawson Conference Room, 8th floor, City Hall
March 25, 2003

An open work session was held at 4:00 p.m. to discuss potential enforcement/violation guidance/policies. All Board members were present. Staff members in attendance were Ed Haughton and Brian Ballard of the City of Hampton Planning Department. No action was taken.

PUBLIC HEARING AND REGULAR MEETING
City of Hampton Wetlands Board
City Council Chambers, 8th floor, City Hall
March 25, 2003

PRESENT: Chairman William M. Snider, II, Vice-Chairman William L. Wood, and Board Members Lillian Bellamy, Gayle Cozzens, and Thomas W. Morris.

ITEM I. CALL TO ORDER

and

ITEM II. ROLL CALL.

Chairman Snider called the meeting to order at 5:00 p.m. and introduced each of the Board Members. Staff persons in attendance were Ed Haughton, Staff Coordinator Brian Ballard, and Sharon McSmith of the Hampton Planning Department, and Mark Eversole of the Virginia Marine Resources Commission (VMRC).

ITEM III. CONSIDERATION OF MINUTES.

There being no additions or corrections, a motion was made by Board Member Morris and seconded by Board Member Cozzens to approve the minutes of the February 25, 2003 Wetlands Board meeting. A voice vote on the motion resulted as follows:

AYES:	Cozzens, Morris, Wood
NAYS:	None
ABST:	Bellamy, Snider
ABSENT:	None

The Board discussed and agreed that whenever the City Attorney has had time to review the proposed enforcement policy guidelines and other items discussed at today's work session, and when the City Attorney will be available to meet with the Board, is the time the Board will next meet to discuss these issues.

There being no additions or corrections, a motion was made by Board Member Cozzens and seconded by Board Member Bellamy to approve the minutes of the January 28, 2003 Wetlands Board meeting.

AYES: Bellamy, Cozzens, Morris, Snider
 NAYS: None
 ABST: Wood
 ABSENT: None

ITEM IV. JOINT APPLICATIONS (PUBLIC HEARING ITEMS).

There were no public hearing items.

ITEM V. STAFF REPORT.

Hampton University

Mr. Brian Ballard stated that Hampton University was required at the last Board meeting to submit a mitigation plan by tonight and they have done so. Mr. Ballard recommended that he meet with VIMS, the University's representative, and their consultant, MSA, P.C., to work out details of the plan and bring a recommendation back to the Board at the next public meeting.

In response to questions by Chairman Snider as to whether what was submitted shows the planting plan for all of the marsh grass, Mr. Ballard stated he does not know if the entire 8,000 linear feet is shown, but it does show where the plantings will be and the plan looks like a good first step towards a complete plan; we need to make sure the location is sufficient, that the soils are sufficient, etc. We will submit a copy of the plan to VIMS for a technical review to determine if it is a viable plan.

In response to a statement by Vice-Chairman Wood that the plan did not address the buffer which was part of the Wetlands permit, Mr. Ballard stated they will submit an as-built survey of their site to the Site Plan Review Committee since there are other site deficiencies. Once the new plan has been compared to the original site plan and it has gone through review by the Site Plan Review Committee and the Chesapeake Bay Review Committee, which will include a buffer restoration plan, he will report back to the Board as to what has transpired.

In response to a statement by Chairman Snider that the cord grass planting plan shows trees in an area that is part of the buffer restoration, but this does not look like a complete buffer restoration plan, Mr. Ballard stated he is unsure at this time if that is their as-built survey or if that is the original site plan; what he did ask of Hampton University is that they get the restoration plan for the Spartina grass to the Board for approval for planting while the window of opportunity for planting remains open. The buffer restoration can impact the Landscape Plan, the Stormwater Plan, the Chesapeake Bay Review Committee, etc., and will go through the Site Plan Review Committee. He asked the University to submit this plan now because the window of opportunity for planting Spartina is this spring and summer.

In response to a question by Chairman Snider concerning consultation with VIMS, he stated that the planting area originally shown is not where it is shown on the drawing submitted today; it was originally shown in the cove to the right of where it is now. However, if VIMS says it is the right linear footage--and we agreed to 8,000 feet, and that it is the best place to put it in terms of its ability to survive and thrive, then it will be acceptable, although it is not what was originally proposed.

Mr. Ballard stated when MSA called and asked for guidance on the planting plan, they were provided with our letter, with the letter from VIMS, and with cross-section drawings that Hampton University had originally put together that indicated where they wanted to plant the vegetation. They had thought about putting it along the riprap, but he indicated that we would need to review it to see if it would thrive, but that the cove seems like an area that does not have as much impact from wakes and is more protected. Also, one consideration that should be put into a mitigation plan is a review of the modified plan in one year to determine survivorship—we could include a notation that requires re-planting if, for example, 50% or more of the vegetation is dead after the first or second year that it be replanted.

Chairman Snider confirmed with Mr. Ballard that he will review the plan with VIMS and next month it will be brought back to the Board with a final recommendation for planting.

Board Member Morris stated if the planting is to be accomplished near the end of May, a plan must be approved soon.

The Board agreed for Mr. Ballard to proceed as discussed.

Wetlands Symposium

Mr. Ballard stated that a couple of Board members attended this year's Wetlands Symposium which focused on mitigation policy and included a presentation by VMRC, VIMS, and one from a local wetlands board, as well as a gentleman doing private mitigation banking. It was a very interesting, educational, and inspiring Symposium. VMRC already has a mitigation policy in place, and James City County has modified the State's mitigation policy to fit their local needs, which is something we should explore in the future. He stated he is unaware of any formal mitigation policy for our Board, though we have seen voluntary mitigation such as happened on Zilber Court wherein the owners of three adjacent bulkheads volunteered to plant vegetation in front of their bulkheads. We hope to explore what the State and other localities have done and modify them as we are currently doing with our enforcement policies to start to develop mitigation options over the next several months.

Chairman Snider stated we should explore all options available. Mitigation is one approach that has worked. One thing he found interesting at the Symposium is there is a private civil engineer whose company has bought land adjacent to a tributary of the Mattoon River and is in the process of establishing a commercial wetlands bank. In situations where you do not have a place to mitigate, then you can buy into this

commercial wetlands bank; they are trying to establish a 2:1 trade-off. If someone wants to fill in 1,000 feet of wetlands and we determine that some mitigation is required but there is no place to mitigate in Hampton, then we could require the applicant to purchase 2,000 feet of wetlands from the commercial wetlands bank. It is a natural area which was not wetlands and they are creating a tidal wetlands bog, 35 acres of salt-water marsh where none had existed.

In response to questions by Board Member Cozzens concerning whether this plan would allow destruction of wetlands here and creation of wetlands elsewhere, Chairman Snider stated if someone elsewhere has to fill or destroy wetlands and there are no available means of mitigation in King William County, then their Wetlands Board can require the applicant to purchase wetlands at a 2:1 ratio from the wetlands bank. This is more for developers and it is an idea whose time may not have arrived. The engineer was trying to sell this idea; the State statute permits wetlands banking, now the only agency that does it in the state is VDOT which has banked wetlands all over the State because of road projects.

Board Member Cozzens stated that no additional wetlands in Hampton need to be violated or filled in.

Chairman Snider stated the concept will probably have some viability in the future; maybe not for us, but for other localities.

Mr. Ballard stated that mitigation banking has been a standard practice for non-tidal wetlands, but even with mitigation banking, the process should first be avoidance, then minimization, then mitigation on site, then mitigation off site within the watershed, then off-site in an adjacent watershed; avoidance should be the first step and mitigation should be the last possible step. "In lieu of fee" means that with a certain impact you pay a fee to a fund; what is a reasonable amount of money is something being explored, even for small scale impact. If you think about all of the projects the Board has approved, they are incremental impacts to wetlands that were not mitigated and so we are not adhering to the "no net loss of wetlands" State policy, but by having some procedure in place, even if it is a minimal fee that a homeowner would pay for their impact, then the money could be accumulated for the purchase of wetlands or for a partnership to be created with Parks and Recreation or with Langley Air Force Base. Mitigation for a private developer is very expensive; to create wetlands out of uplands--moving that much dirt--can be very expensive. There are various ways to do this and it is something to look into; even for small-scale impacts we should have some type of mitigation policy such as planting spartina in front of a project.

In response to questions by Vice-Chairman Wood concerning other Boards sticking to "no net wetlands loss," Mr. Ballard stated he is not sure, but the City of Chesapeake is looking into developing a similar policy. In James City County they have a minimum square footage that looks at mitigation of small projects. There is an equitable way to do it if you look at project cost to the homeowner—it would be fair, feasible, and practical. To adhere to no net loss would be difficult, for example, to a homeowner impacting 100 feet of non-vegetated wetlands who may have to spend \$10,000 to create wetlands—a wetlands bank may not be a real option for homeowners unless

mitigation is on site. We should not create a hardship and we will explore options such as a partnership for banking with publicly owned land.

Chairman Snider stated that is something, along with the enforcement procedures, that staff should continue looking at and exploring options for—and the Board thanks you for doing so; keep charging ahead with all that you are doing.

Citizen Inquiry/Dredging

Mr. Ballard stated that at last month's meeting, Mr. Cone had requested information about dredging. This has been discussed with Fred Whitley, City Engineer, who said Mr. Cone needs to discuss his specific questions with him and, though dredging is not part of the Wetlands Board's jurisdiction, the information is helpful to a citizen. The City has put out a Request for Proposal for an economic benefits analysis for the Hampton River dredging. They already have a report, the engineering feasibility study, which gives a cost analysis and feasibility of dredging the river and its tributaries, and now they want to look at the economic benefits—check the balance between the cost of the project versus its benefit, and so they are hiring a firm to do that analysis. The RFP is due in mid-April; through the summer the firm will do the study and we should have the results by the Fall to submit to Council for recommendation. City Council will be provided the cost, the engineering feasibility of the project, the economic benefits, and whatever other information it may need to make a decision as to whether dredging takes place beyond where the Army Corps of Engineers dredges the river and which tributaries will be involved, if any.

In response to Chairman Snider's question as to whether the inquiry relates to dredging or wetlands, Mr. Gene Cone answered that he has an official complaint as a citizen of the city that includes both issues (that will be discussed during Matters By The Public).

ITEM VII. MATTERS BY THE BOARD MEMBERS.

Vice-Chairman Wood stated that a neighbor whose property is in view of his own, stopped by his house to see if he would be in violation if he replaced a portion of his wooden bulkhead. During the recent rains three areas of the bulkhead have given away and are pushing forward and he wants to replace the bad areas with two new posts. Vice-Chairman Wood stated he believes this is maintenance and would not require a permit.

Mr. Ballard stated he agreed; that is does sound like maintenance.

Chairman Snider stated he visited the site and agrees that it is maintenance as long as he is not replacing the existing bulkhead and is only shoring up what is there.

Vice-Chairman Wood stated where the bulkhead has given away and gone forward there is a difference of 6-8" and there is no way to bring it back--there is some encroachment but no other way to do it. This is only in several spots of what is probably up to 300 linear feet; if the Board wants him to get a permit he will.

Chairman Snider requested that staff ask Charlie Smith to do a site check and if he believes a permit is required, then the neighbor will be required to get one; we will defer to Mr. Smith's judgment.

In response to a question by Mr. Haughton, Vice-Chairman Wood stated it is Judge Massenburg's property at the end of the cul-de-sac on Chichester Road.

ITEM VIII. MATTERS BY THE PUBLIC.

Mr. Gene Cone, 1341 Coral Place, stated it is the second month in a row that he would like to make an official complaint: The City of Hampton is neglectful in their upkeep of the Hampton River and its tributaries. He stated that Billy Wood can vouch for him, and even though Mr. Ballard says today they are looking into it, for 10 years he has been trying to get the dredging done of the Hampton River and its tributaries. In the meantime, since the City has done nothing, the mudflat is ruining all of the foliage of his wetlands and has ruined the City's wetlands across the way. He stated he wants to make an official complaint for the second month that nothing has been done for 10 years. In fact, the mudflats are coming up and ruining lawns. He has spent a couple thousand dollars in riprap years ago, which he got approved by the Board, but it does no good because it is filling in and he believes that his property and everybody else's property in this town should be cared for, and he puts the responsibility on the Board because it is responsible for our wetlands.

Chairman Snider stated to Mr. Cone that he comes to the Board meetings every month and that every month he explains to Mr. Cone that he is speaking to the wrong people because it is not within the jurisdiction of the Wetlands Board to dredge the Hampton River; that decision rests with the City Council.

ITEM IX. ADJOURNMENT.

The meeting was adjourned at 5:37 p.m.

Respectfully submitted,

Brian P. Ballard, City Planner
Secretary to the Board

APPROVED BY:

William M. Snider, II
Chairman, Hampton Wetlands Board